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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 GARY R KING,

7 Petitioner,

8 v.

9 STATE OF WASHINGTON,

10 Respondent.

Case No. C18-5722-RBL-TLF

ORDER TO SHOW CAUSE OR  
AMEND

11 Petitioner, who is proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant  
12 to 28 U.S.C. § 2254. Dkt. 1. Petitioner names the State of Washington as the respondent.

13 Under Rule 2(a) of the Rules Governing Section 2254 Cases, “the petition must name as  
14 respondent the *state officer who has custody*.” (emphasis added). That state officer is the person  
15 “with the ability to produce the prisoner’s body before the habeas court.” *Rumsfeld v. Padilla*,  
16 542 U.S. 426, 435 (2004). The proper state officer is determined based on petitioner’s custody at  
17 the time he filed his petition. *See, e.g., Carson v. Hood*, 1999 WL 978017 at \*3 (D. Oregon  
18 1999) (noting that warden was a proper respondent because warden had control of petitioner’s  
19 release when petitioner initially filed his petition); *see also Maleng v. Cook*, 490 U.S. 488, 490-  
20 91 (1989) (when prisoner filed petition while restrained, custodian was proper respondent even  
21 after petitioner was released). Failure of petitioner to name the correct respondent deprives the  
22 Court of personal jurisdiction. *Smith v. Idaho*, 392 F.3d 350, 354-55 (9th Cir. 2004).

1 Therefore, it is ORDERED:

- 2 1) Petitioner must file an amended petition naming the correct respondent, or otherwise  
3 show cause why the Court should not recommend his petition be dismissed for lack of  
4 personal jurisdiction, **on or before January 4, 2019**.
- 5 2) The Clerk is directed to provide a copy of this Order to petitioner.
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7 Dated this 4th day of December, 2018.

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11 Theresa L. Fricke  
12 United States Magistrate Judge  
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